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GIGANEWS, INC. and LIVEWIRE SERVICES, INC.

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

PERFECT 10, INC., a California corporation,

Plaintiff,

vs.

GIGANEWS, INC., a Texas corporation;  
LIVEWIRE SERVICES, INC., a Nevada  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

**Case No. 11-CV-0905 H (MDD)**

**EXPERT DECLARATION OF  
FREDERICK S. LANE IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
MOTION FOR PRELIMINARY  
INJUNCTION**

**Special Briefing Schedule Ordered**

DATE: September 12, 2011  
TIME: 10:30 a.m.  
CTRM: 13  
JUDGE: Marilyn L. Huff

I, Frederick S. Lane, do hereby declare as follows:

1. I make this declaration in support of the Opposition to Plaintiff Perfect 10's Motion for Preliminary Injunction filed by Defendants Giganews, Inc. and Livewire Services, Inc. Except where otherwise stated, I have direct and personal knowledge of the facts set forth herein and, if called as a witness, can and will competently testify thereto.

**A. Educational and Professional Background**

2. I received a Bachelor of Arts degree in May, 1985 from Amherst College in the fields of American Studies (*magna cum laude*) and Classics (*cum laude*). In May, 1988, I graduated from Boston College School of Law with a Juris Doctorate degree (*cum laude*).

1           3.       Following graduation from law school, I clerked for two years for the Honorable  
2 Frank H. Freedman, former Chief Judge, United States District Court (D. Mass.) (since deceased). In  
3 October 1990, I moved to Burlington, Vermont, where I worked in private practice for  
4 approximately four and a half years.

5           4.       In February 1995, I began a computer consulting firm for the legal profession. A short  
6 time later, I began researching my first book, *Obscene Profits: The Entrepreneurs of Pornography in*  
7 *the Cyber Age* (Routledge 2000).

8           5.       I have since written a total of six books, the most recent of which is *Cybertraps for*  
9 *the Young* (NTI Upstream 2011).

10          6.       In addition to my professional work, I served as a member of the Burlington (VT)  
11 Board of School Commissioners from October 2001 through March 2011, including the final two  
12 years as chairman of the Board. I also served for three years as a member of the Vermont  
13 Community Access Media Board of Directors.

14          7.       Additional information about my professional activities is set forth in my *c.v.*, a copy  
15 of which is attached hereto as Exhibit A.

16           **B.       Development of Relevant Expertise**

17          8.       I have been working with computers in various capacities since 1974. I purchased my  
18 first personal computer in the fall of 1984 (an IBM PC) and have used a personal computer  
19 continuously since that time.

20          9.       I began using computer bulletin boards in the late 1980's, and first began using the  
21 Internet in late 1991 or early 1992, prior to the release by Marc Andreessen of Mosaic 1.0 (the first  
22 graphical Web browser).

23          10.      I have been a consistent user of the Internet since that time and have lectured  
24 frequently on the practical and legal issues that the Internet presents to the legal profession, college  
25 and high school students, civic groups, and parents. My first seminar devoted specifically to the  
26 Internet for lawyers was presented at a meeting of the Vermont Bar Association in January 1995.  
27 Since that time, I have presented dozens of seminars on a wide variety of computer-related topics,  
28 including electronic discovery, the Y2K bug, computer forensics, personal privacy, and social

1 networking.

2 11. My specific interest in the online adult industry was sparked in 1996 by the passage  
3 of the Communications Decency Act (“CDA”), which was part of the Telecommunications Act of  
4 1996. The provisions of the CDA caused a tremendous outcry in various sectors of the Web and  
5 became one of the first Internet-related issues to catch the attention of the mainstream media.

6 12. As someone with a particular interest in First Amendment, free speech, and  
7 computer-related issues, I closely followed the debate over the CDA and the subsequent legal  
8 proceedings before the U.S. District Court in Philadelphia and the United States Supreme Court.

9 13. Following the U.S. Supreme Court’s unanimous rejection of the indecency provisions  
10 of the CDA in *Reno v. ACLU*, 521 U.S. 844 (1997), I put together a book proposal to examine the  
11 pornography industry’s highly successful adoption of the Internet. The proposal was accepted by  
12 Routledge and my book, *Obscene Profits: The Entrepreneurs of Pornography in the Cyber Age*, was  
13 published in January 2000.

14 14. I began researching and writing *Obscene Profits* in January 1998. Over the following  
15 two years, I spent approximately 3,000 hours researching the pornography industry in general and  
16 online adult businesses in particular. My work included: traditional research, including the review of  
17 previously published books and articles; interviews with various individuals working in, for, and  
18 against the pornography industry; online research of sexually explicit web sites and examination of  
19 various business models; attendance at online adult industry trade shows; review of legal decisions  
20 and on-going prosecutions from around the country; and extensive drafting and redrafting of the  
21 manuscript itself.

22 15. *Obscene Profits* is divided into two halves: the first half is a historical discussion of  
23 pornography, concentrating on the way that various technologies have quickly been used to produce  
24 sexually explicit materials; the second half is more economic in focus, consisting of an examination  
25 of different types of adult businesses and the ways in which they have adapted their business  
26 practices to the Internet.

27 16. In the years following the publication of *Obscene Profits*, I frequently have been  
28 interviewed as an expert on the pornography industry, online adult businesses, and American

1 cultural battles by numerous media outlets, including newspapers, radio, and television. Sample  
2 organizations include Comedy Central's "The Daily Show with Jon Stewart," ABC's "Nightline",  
3 CBS's "60 Minutes," NBC's "Weekend Today," *The New York Times*, the *Los Angeles Times*,  
4 NPR's "Marketplace Morning Report," Vermont Public Radio's "Vermont Edition," WCVB  
5 (Boston)'s "Chronicle," MSNBC, TechTV, *Wired*, the *Washington Post*, *U.S. News & World Report*,  
6 and the BBC.

7 17. For the past decade, I have also worked as an expert witness and/or consultant in a  
8 variety of cases involving pornography, obscenity, and/or the pornography industry. These matters  
9 range from criminal sentencing hearings to constitutional challenges to local and federal statutes.  
10 Past clients include the U.S. Department of Justice; the City of Charlotte, North Carolina; the  
11 University of Vermont; and numerous private individual and corporate defendants.

12 18. Following the publication of *Obscene Profits*, I have continued to research and  
13 educate myself about the pornography industry in general and online adult business in particular.

14 19. By the time I finished *Obscene Profits*, I had compiled a database of roughly 3,000  
15 articles, interviews, statutes, legal decisions, legislation, movie reviews, book summaries, and other  
16 sources of information about pornography and obscenity. Over the ensuing decade, my personal  
17 archive has grown to approximately 20,000 articles, the bulk of which deal with some aspect of the  
18 adult industry. I routinely refer to the contents of that database when researching book ideas, writing  
19 articles, consulting on computer forensics cases, or preparing lectures.

20 20. Since the publication of *Obscene Profits*, I have maintained subscriptions to and  
21 regularly read the online adult industry's two leading trade publications, *Adult Video News* and *Xbiz*.  
22 I have contributed articles to both publications at various times over the years, although the  
23 contraction of online adult revenues (discussed in more detail below) has reduced the number of  
24 freelance articles they purchase.

25 21. I am currently working on two projects that make it necessary for me to continue  
26 researching and educating myself about both the historical and contemporary operation of the online  
27 adult industry. One is a biography of a well-known and highly successful operator of an online adult  
28 business, and the other is a computer forensics handbook for defense attorneys.



**C. Work Performed in Support of This Declaration**

22. Prior to being hired as an expert witness for Defendants in this case, I was familiar, to varying degrees, with the two main parties in this litigation, Perfect 10 and Giganews.

23. On or about February 12, 2002, I was hired as an expert witness for defendant Cybernet Ventures, Inc. in a similar copyright infringement lawsuit filed by Perfect 10. At the time, Cybernet Ventures owned and operated Adult Check, an adult verification service (AVS). As an expert for Cybernet Ventures, I was provided with and reviewed a variety of pleadings, declarations, and materials related to the operation of Perfect 10 and the company's lawsuit against Cybernet Ventures.

24. On or about April 20, 2010, I was hired as an expert witness for defendant RapidShare A.G., in a similar copyright infringement lawsuit filed by Perfect 10. RapidShare A.G. operates the Web site **rapidshare.com**, which Perfect 10 alleged infringed on Perfect 10's copyrights through the storage and download of protected images. As an expert for RapidShare A.G., I was provided with and reviewed a variety of pleadings, declarations, and materials related to the operation of Perfect 10 and the company's lawsuit against RapidShare A.G.

25. As part of my research for *Obscene Profits*, I had first learned of the existence of *Perfect 10* magazine during the debate over the Military Honor and Decency Act of 1996, when Congress elected to bar certain magazines from commissaries and other military stores. *Perfect 10*, like *Playboy*, was one of a small number of adult magazines permitted to remain on sale.

26. Through my use of the Internet in the early 1990's and my extensive reading of computer industry trade journals (*PC Magazine*, *PC World*, *Byte*, *Computer Shopper*, *Boardwatch*, etc.), I learned of and began using Internet newsgroups. Over the years, I watched the evolution of newsgroups as an information resource and as a commercial venture for companies like DejaNews.com (later purchased by Google) and Giganews. I used my personal experience and research to write about the role of Usenet in the rise of the online adult industry in *Obscene Profits*. I have also had occasion to research newsgroups as part of my work as a computer forensics expert.

27. Following my retention as an expert witness in the current litigation, I was provided with and reviewed a variety of materials. In preparation for making this declaration, I have reviewed

1 the following documents:

2 a. Perfect 10's Notice of Motion and Motion for Preliminary Injunction Against  
3 Defendants Giganews, Inc. and Livewire Services, Inc. (Docket #17);

4 b. Plaintiff Perfect 10 Inc.'s Memorandum of Points and Authorities in Support  
5 of Its Motion for Preliminary Injunction (Docket #17-1);

6 c. Declaration of Sheena Chou in Support of Plaintiff's Motion for Preliminary  
7 Injunction (Docket #18);

8 d. Declaration of Sean Chumura in Support of Plaintiff's Motion for Preliminary  
9 Injunction (Docket #20);

10 e. Declaration of Melanie Poblete in Support of Plaintiff's Motion for  
11 Preliminary Injunction, with exhibits (Docket #21);

12 f. Declaration of Dr. Norman Zada in Support of Plaintiff's Motion for  
13 Preliminary Injunction, with exhibits 1-25 (Docket #s 22-27).

14 g. Assorted research materials related to the parties and issues in this case.

15 28. In addition, I have spent time reviewing the Web sites of the two main parties to this  
16 litigation, and have conducted searches similar to those referenced by Sheena Chou, Sean Chumura,  
17 Melanie Poblete, and Dr. Norman Zada in their respective declarations. I have also conducted  
18 independent research into the various issues raised by the documents and pleadings in this case.

19 29. Lastly, I have relied on the research that I have done over the last 13 years, including  
20 the informational database that I have compiled in the process.

21 **D. A Brief History of the Online Adult Industry**

22 30. Today's online adult industry can be traced to two unrelated developments in the  
23 early 1980s. First, a number of computer bulletin board systems around the United States generated  
24 sizeable revenues by offering subscribers access to adult stories and scanned pornographic images.  
25 Second, in Geneva, Switzerland, a researcher named Timothy Berners-Lee wrote a memo in 1984  
26 proposing a new system for linking together electronic resources stored in various computer servers  
27 at CERN, the Swiss nuclear research facility.

28 31. Berners-Lee's information system, which he dubbed the World Wide Web, remained

1 largely the province of researchers and scientists until the release in 1993 of Mosaic, the first  
2 graphical Web browser. The new tool for accessing information online set off a period of  
3 phenomenal growth for the Internet, with new users joining at a rate of several thousand percent per  
4 year.

5 32. More than any other industry, the pornography industry saw the potential of the new  
6 information medium. A decade earlier, pornography businesses had profited enormously from a  
7 similar paradigm shift, when the videocassette recorder became a staple of the American home. The  
8 transition from film to video taught the adult industry two valuable lessons: First, that new  
9 technology is an opportunity to repackage and re-purpose existing content; and second, that  
10 consumers will pay a premium for easier and more private access to sexually explicit materials. Just  
11 as videos were an easier and more private alternative to adult movie theaters, Web sites were an  
12 easier and more private alternative to adult video stores.

13 33. The adult industry was so successful in adapting to the new medium that by the  
14 middle of 1995, there was growing concern about the amount of pornography online. Fears were  
15 exacerbated by a *Time* magazine cover story entitled "On a Screen Near You: Cyberporn." Written  
16 by Philip Elmer-DeWitt, the story cited a provocative (and erroneous) statistic that 83.5% of all  
17 Internet images were pornographic.

18 34. Although Elmer-DeWitt later conceded that he relied on a flawed study, his story  
19 helped provide impetus in Congress to the passage of the Communications Decency Act (CDA).  
20 Despite being aimed at the burgeoning online adult industry, the law was opposed by a broad range  
21 of businesses and organizations on the grounds that a prohibition against the transmission of  
22 "indecent" could subject them to criminal liability.

23 35. The U.S. Supreme Court's unanimous rejection of the indecency provisions of the  
24 CDA in *Reno v. ACLU*, 521 U.S. 844 (1997) gave a tremendous psychological boost to the online  
25 adult industry. Although the Court upheld the application of existing obscenity standards to the  
26 Internet, it ruled that the criminalization of mere indecency was unconstitutional. In the process, the  
27 Court described the free speech value of the new medium in such sweeping terms that it has proven  
28 difficult, if not impossible, for Congress to impose significant limitations on the distribution of

1 sexually explicit content on the Internet.

2 36. The three-to-four year period after the Court's decision in *Reno v. ACLU* is  
3 colloquially known as "the golden years" for the online adult industry. The novelty of the new  
4 medium, the staggering array of content available, and the convenience of accessing sexually  
5 explicit materials in the comfort of one's home meant that enterprising Webmasters could charge  
6 \$20, \$30, or even \$40 per month for access to an adult Web site.

7 37. The online adult industry's confidence was not shaken by subsequent efforts by  
8 Congress to limit the spread of Internet pornography. In 1998, Congress passed the Child Online  
9 Protection Act (COPA), which imposed a requirement on Web sites to block access by minors to  
10 content deemed "harmful to minors." The law was instantly challenged, however, and in a long  
11 series of court decisions, repeatedly held to be unconstitutional. The single Internet content law to  
12 survive scrutiny is the Children's Internet Protection Act (CIPA), a 2000 law which among other  
13 things requires libraries and schools to install software filters as a condition of receiving "E-rate"  
14 funds.

15 38. The online adult industry's biggest challenges have proven to be economic, not legal.  
16 In 2000, MasterCard and Visa announced aggressive programs to cut down on the number of  
17 "chargebacks," the term for refund requests from consumers dissatisfied with an online purchase or  
18 who alleged that their card had been stolen and misused (a frequent explanation to disgruntled  
19 spouses). Not surprisingly, the adult industry had a much higher percentage of chargebacks than  
20 other online merchants – so much so, in fact, that American Express stopped processing credit card  
21 purchases for online adult businesses altogether that same year. The credit card company campaigns  
22 against chargebacks marked the beginning of the end of the online adult industry's "golden era."

23 39. A more significant factor emerged at about the same time: the development of adult  
24 affiliate programs. Savvy adult Webmasters realized that they could increase their subscription  
25 revenues by providing free content to a large number of feeder sites, which would use the licensed,  
26 non-infringing content to attract Internet traffic and direct it back to the subscription sites. Some  
27 subscription sites paid a small fee for all traffic, others paid their affiliates a percentage of  
28 subscriptions generated by their affiliate sites, and still others offered some combination of the two.



1 Much of the free content was dumped onto structurally simple adult Web sites known as thumbnail  
2 gallery posts (TGPs), where Web surfers could view hundreds or thousands of images, video clips,  
3 and links to adult Web sites.

4 40. With the steady growth of broadband Internet access in the United States, TGP sites  
5 have been overtaken by so-called “tube” sites, Web sites that specialize in offering streaming video  
6 of sexually explicit movie clips to visitors. The sites support themselves through advertising revenue  
7 from content producers and third-parties, and through subscription sales to consumers who want  
8 access to higher quality, full-length videos.

9 41. As the amount of free content spread, it has had the predictable effect of driving down  
10 subscription rates to adult Web sites and reducing revenues industry-wide. As early as March 2001,  
11 for instance, *Wired* magazine was reporting that the online adult industry was suffering from a “glut  
12 of smut.”

13 42. By 2009, industry leaders like Larry Flynt (*Hustler*) and Joe Francis (“Girls Gone  
14 Wild”) were claiming that the adult industry as a whole had experienced a \$5 billion drop in annual  
15 revenues, from \$18 billion per year to \$13 billion.

16 43. Just last week, the *Wall Street Journal* reported that annual industry revenues for  
17 adult pay-per-view and video-on-demand have dropped from just over \$1 billion in 2008 to \$899  
18 million in 2010, a trend industry analysts expect to continue, if not accelerate. The availability of  
19 free content on the Internet is the most often-cited explanation for the drop.

20 **E. Over the Past 15 Years, Consumer Demand for Adult Materials Has Shifted**

21 44. When the online adult industry first started in the mid-1990s, the idea of accessing  
22 adult materials in the privacy of one’s home was sufficiently novel that early Web sites were little  
23 more than analogues of print magazines. Put another way, the content available on early adult Web  
24 sites was not significantly more explicit than the content available on newsstands or through the  
25 mail. Consumers were willing to pay adult Web sites a premium for the greater convenience and  
26 privacy, even though the content was not remarkably different.

27 45. The type of content available online began to change in the late 1990s, in part due to  
28 the greater sense of confidence and freedom from prosecution heralded by the *Reno v. ACLU* case,

1 and in part because of technological changes. As computers grew faster and Internet transmission  
2 speeds increased, adult Web masters expanded into more hardcore offerings, live chat, live sex  
3 shows, and streaming video (a technology the industry played an important role in developing and  
4 popularizing).

5 46. Predictably, as more explicit material became available online, consumer demand for  
6 such materials increased. One metric for illustrating this point is Alexa.com, a company that  
7 compiles a variety of information about Web sites, including a site's popularity, its ownership, the  
8 countries in which the site is most popular, the demographics of the site's visitors, and so on.  
9 Alexa.com's most well-known feature is its site ranks, which rank Web sites based on a three-month  
10 rolling average of the number of unique visitors each site receives. The rankings offer some useful  
11 insights into the preferences of Internet users at any given point in time.

12 47. As of August 9, 2011, the top five sites in the Alexa.com rankings were as follows:  
13 Google, Facebook, YouTube, Yahoo!, and Blogger.com.

14 48. A number of adult Web sites are in Alexa.com's list of the most frequently-visited  
15 sites, including: Xvideos.com (48), xHamster.com (60), Pornhub (65), Youporn (77), Tube8.com  
16 (117), RedTube (133), YouJizz.com (181), and Cam4 (269).

17 49. All of those sites, with the exception of Cam4, are "tube" sites that provide access to  
18 streaming video of hard-core adult content. Cam4 is a site that provides access to live Web cams of  
19 individuals scattered around the world, most of whom are engaged in sexual activity.

20 50. These top-ranking adult Web sites have several characteristics in common: 1) they  
21 offer a wide variety of hard-core (i.e., explicit) and fetish content across a wide range of categories;  
22 2) they offer access to large quantities of videos; and 3) they offer large amounts of content for free  
23 and relatively low-cost monthly subscriptions.

24 51. Sites that feature primarily soft-core content or images alone tend to attract much less  
25 interest from Internet users. Even a site as well-known as **playboy.com**, which has more than a half-  
26 century of high-profile name recognition behind it, is only ranked at 2,372.

27 52. There are several other adult Web sites that are similar to **perfect10.com** in the  
28 content that they offer consumers. Among the leading examples are: Met-Art.com (1,349),

1 Femjoy.com (3,514), Domai.com (13,803), abbywinters.com (18,447), and avErotica.com (45,569).

2 53. According to the Alexa.com rankings, **perfect10.com** has a current site ranking of  
3 185,793.

4 **F. The Economic Structure of the Online Adult Industry Today**

5 54. In its heyday – late 2000 to early 2001 – revenues for the online adult industry were  
6 estimated at between \$4 and \$4.5 billion per year. According to current estimates, the online adult  
7 industry takes in no more than half that amount today.

8 55. The decline in online adult revenues is attributable to a number of different factors.  
9 First, as discussed earlier, the amount of free content available online has continued to grow at an  
10 astronomical rate. Faced with steadily falling revenues, the major subscription Web sites have made  
11 an increasingly urgent push for new paying customers by offering larger and larger amounts of free  
12 licensed content for affiliates to use to attract traffic. But since old content on the Internet rarely  
13 disappears, the supply of free, non-infringing pornography has become virtually limitless,  
14 paradoxically undercutting the need for anyone to pay for a subscription to an adult Web site.

15 56. Second, with the advent of digital camera and video camera technology, it also  
16 became much easier for individuals and couples to post their own explicit content on amateur  
17 sharing sites, and surprisingly large numbers of people do so. Such content is either freely available  
18 on sharing sites that support themselves through advertising, or is available for a nominal fee.

19 57. Third, the recent economic downturn has hit the online adult industry with surprising  
20 severity. Although the adult industry has traditionally been relatively recession-proof, the harshness  
21 of the current economic climate has increased consumer demand for free rather than paid content.

22 58. Online adult businesses have tried to adapt to these new realities in part by providing  
23 consumers free content in an effort to lure them into subscribing to pay sites. One of the ways in  
24 which adult companies do this is by seeding Usenet newsgroups like alt.binaries.sex, alt.sex.binaries,  
25 alt.sex.binaries.erotica, etc. with images or film clips that are marked with the name of the Web site  
26 or with advertising text.

27 59. For instance, in June 2011, someone affiliated with a Web site named **deartilly.com**  
28 appears to have posted a series of photos to alt.sex.binaries. Each message contains an advertisement

1 for “The Naked Picture Poster from Down Under,” as well as a set of links back to the poster’s Web  
2 site. A screenshot of one such message and the attached image file is attached as Exhibit B.

3 60. Similarly, the adult Web site **3rdstudios.com** posted a long series of photos to three  
4 newsgroups (alt.binaries.sex, alt.sex.females., alt.sex.pictures) on August 8, 2011 with  
5 advertisements for the website. (The header information indicates that the message was posted by  
6 “bnmdfs@3rdstudios.com.”) All of the images are labeled with the name of the image and the name  
7 of the adult Web site. A screenshot of one such message and the attached image file is attached as  
8 Exhibit C. There are myriad other examples of adult Web sites advertising on Usenet in a similar  
9 fashion.

10 61. By now, most Usenet users are familiar with this form of advertising by adult Web  
11 sites. The fact that many adult Web sites voluntarily put content in Usenet newsgroups for  
12 advertising purposes makes it difficult to determine precisely how much adult content on Usenet is  
13 pirated and how much is legitimately available to consumers.

14 **G. Perfect 10’s Business Models**

15 62. In his declaration in support of Perfect 10’s motion for preliminary injunction, Dr.  
16 Norman Zada states that “[f]rom 1997 through June 2007, Perfect 10 published the well-known  
17 magazine ‘Perfect 10.’ ... Because of rampant infringement, Perfect 10 was forced to cease  
18 production of its flagship magazine in June 2007 and lay off key employees. ... Perfect 10’s revenues  
19 have declined from close to \$2,000,000 a year to less than \$90,000 a year. It has lost in excess of \$60  
20 million.” Declaration of Dr. Norman Zada, pp. 2-3.

21 63. It is worth noting as an initial matter that Dr. Zada’s estimate of his company’s losses  
22 has increased by \$10 million in just fifteen months. According to his April 11, 2010 declaration in  
23 the case of *Perfect 10 v. Rapidshare A.G. et al.*, Case No. CV 2596 H (WMC) (Calif. 2009)  
24 [hereinafter “the *Rapidshare* case”], the company’s losses at the time amounted to \$50 million.

25 64. Notwithstanding the company’s losses to date, Dr. Zada states that his company  
26 continues to operate **perfect10.com**, where subscribers “may view more than 20,000 Perfect 10  
27 Images as well as several videos.” That is precisely the same language that Dr. Zada used in his prior  
28 declaration, suggesting that there has been no change over the last fifteen months in the amount of



1 content offered on the Web site.

2 65. In both declarations, Dr. Zada stated that the high-water mark for his company's  
3 revenues was \$2,000,000 per year, and that annual revenues had fallen to \$150,000 per year as of  
4 April 2010 and \$60,000 per year in July 2011. Dr. Zada attributes the decline in revenues for his  
5 company to "rampant infringement" and implicitly argues that absent such infringement, his  
6 company would be profitable. However, as Dr. Zada's own comments make clear, Perfect 10 was  
7 never profitable (it has apparently lost on average between \$3.5 and \$4 million per year) and it was  
8 highly unlikely that it ever would be. A more reasonable and consistent explanation for the  
9 company's fate is that Perfect 10 has been affected by the market forces that have hit the adult  
10 industry as a whole and has failed to take steps to remain competitive in a dynamic industry with  
11 little or no margin for error.

12 **1. Perfect 10 Magazine**

13 66. From its inception, *Perfect 10* magazine was an exercise in nostalgia. Had it been  
14 founded in 1953 (when its obvious model, *Playboy*, was launched), it would have been bold and  
15 daring. But in 1997, despite its enormous global brand identity, even *Playboy* was having trouble  
16 maintaining a market for a softcore adult magazine. The circulation of *Playboy* magazine had  
17 dropped from a high of over 7 million per month in the early 1970s to roughly 3 million in the late  
18 1990s. The magazine's circulation today is just 1.5 million and trending steadily downward.

19 67. Like other men's magazines, *Playboy* has also faced growing competition from other  
20 sources of sexually explicit content: adult videos, cable television, and increasingly, the Internet.  
21 1997 was an inauspicious time to start a determinedly softcore publication. According to the  
22 American Society of Magazine Editors, the number of men's magazines has dropped from 113 in  
23 1997 to just 72 in 2009.

24 68. Sharp rises in expenses, most notably paper and gasoline, have added to the adult  
25 magazine industry's woes. The newsstand price of the August 1997 *Playboy* was \$4.95; in March  
26 2010, the price was \$6.99. The rising cost, particularly in comparison to the resources available  
27 online, is having a predictable effect on *Playboy*'s subscription base, which has dropped by half  
28 since the late 1990s.

69. The economic challenges facing *Perfect 10* magazine were evident from the start. The magazine's first issue (contained in Exhibit 11 of Dr. Zada's April 2010 declaration in the *Rapidshare* case) consisted of 112 pages. It had a cover price of \$6.95, nearly \$2 more than *Playboy* at the time. The magazine consisted almost entirely of model photos, and did not contain a single page of advertising, which suggests a challenging combination of high production costs and low revenues.

70. By contrast, the August 1997 *Playboy* was 178 pages long and contained 26 pages of full-page ads from national brands, along with myriad smaller ads scattered throughout the magazine.

71. Forty-three issues later (the magazine appeared on a quarterly basis), the cost of *Perfect 10* had risen to \$7.99 per issue, but the level of internal advertising barely changed – just a single full-page ad by Chase-Durer, a watch manufacturing company. Interestingly, the contents of *Perfect 10*'s final issue are somewhat more explicit (both in terms of model poses and written content) than the magazine's earlier issues. Clearly, there was an editorial recognition that topless "Girl Next Door" photos were simply not competitive in the changing adult marketplace. However, that minimal editorial changes were not enough to overcome the economic and marketplace pressures that ultimately drove the magazine out of business.

## 2. The Perfect 10 Web Site ([www.perfect10.com](http://www.perfect10.com))

72. The factors that prevented *Perfect 10* magazine from being an economic success are even more true with respect to the company's Web site, **perfect10.com**.

73. Although the cost of distributing content on the Web is markedly lower than in print, that benefit is outweighed by the vastly greater competition that exists online. Due to obscenity laws and local zoning regulations, the range of adult-oriented print material that can be sold is relatively limited. At the time that *Perfect 10* magazine was launched, *Penthouse* and *Hustler* represented the outer boundaries of what can safely be sold in most mainstream retail outlets, which meant that *Perfect 10* magazine faced a relatively small pool of competitors.

74. Whereas *Perfect 10* magazine was competing with approximately 112 other men's magazines when it was founded, **perfect10.com** was competing from its inception with thousands

1 and then tens of thousands of other subscription-based adult Web sites.

2 75. Like *Perfect 10* magazine, **perfect10.com** has focused its content on a specific niche,  
3 *i.e.*, soft-core photos of models who are explicitly advertised as “all-natural.” The decision to focus a  
4 Web site on a specific niche or fetish is not intrinsically flawed; many niche sites have outlasted  
5 larger sites offering more general content and continue to prosper. The question is how well the Web  
6 site compares to other sites within its niche. By every significant criteria – site design, pricing, and  
7 content – **perfect10.com** has completely failed to keep pace with its competitors in the soft-core, all-  
8 natural niche.

9 76. As an initial matter, the **perfect10.com** Web site is entirely too static, both in  
10 appearance and content, to effectively compete with similar sites. I joined **perfect10.com** in April  
11 2010 and examined it in detail in preparation for the drafting of my declaration in the *RapidShare*  
12 case. I rejoined **perfect10.com** as part of the preparation for the present declaration.

13 77. Based on my examinations of the **perfect10.com** Web site, it is clear that the overall  
14 appearance of the site has changed little if at all from April 2010 to the present. In fact, a search of  
15 the Wayback Machine at **archive.org** shows precisely the same site design, splash screens, buttons,  
16 etc. in use on the Web site on November 10, 2009. (The Wayback Machine is a project of The  
17 Internet Archive, which is dedicated to providing permanent access “to historical collections that  
18 exist in digital format.” As part of that objective, it operates a software spider that trolls the Web and  
19 takes snapshots of Web sites as they exist at that moment.)

20 78. In his declaration, Dr. Zada states that “New images are added to the website on a  
21 regular basis.” However, as noted earlier, Dr. Zada’s own description of the current contents of  
22 **perfect10.com** is identical to his description of the Web site in April 2010. Moreover, there are only  
23 minor indications on the **perfect10.com** Web site that any of the content on the site has been added  
24 recently. There is a static banner in the lower right corner that promises “New Photos!” and a link to  
25 “Fresh This Week – New photos of five of our hottest models.” The linked page has thumbnail  
26 images of five models; each thumbnail is a link to a gallery of photos of the depicted model. Unlike  
27 all of **perfect10.com**’s logical competitors, **perfect10.com** does not promise specific updates or a  
28 regular schedule for doing so, and gives consumers no idea of when specific galleries were added to

1 the site.

2 79. Compared to similar Web sites, **perfect10.com** simply does not offer online  
3 consumers a good value. The site's monthly subscription fee, \$25.50, is in the middle to high range  
4 of rates charged for comparable adult sites. The sites chosen for comparison have the following  
5 monthly subscription rates (in order of Alexa.com rank):

6 Met-Art.com:	\$29.99 recurring, \$39.99 non-recurring
7 Playboy.com	\$19.95 recurring
8 Femjoy.com	\$19.95 recurring
9 Domai.com	\$19.95 non-recurring
10 AbbyWinters.com	\$39.25 recurring
11 avErotica.com	\$29.95 recurring

12 80. A significant factor in **perfect10.com**'s overall lack of competitiveness and economic  
13 success is the fact that the cost for its memberships is generally higher than sites that offer a much  
14 broader range of content and which satisfy consumer demand for hard-core material, extensive  
15 libraries of video, interactive features, *etc.* Vivid.com, one of the industry's largest producers of  
16 adult videos, charges \$29.95 per month for access to more than 3,500 hours of high-definition video  
17 and over 400,000 photos. ClubJenna.com, the official site of the adult industry's most famous star,  
18 Jenna Jameson, charges \$19.95 per month or \$7.99 if billed annually. One of the better-known  
19 "amateur" sites, wifeysworld.com, also charges \$19.95 per month. There are myriad adult Web sites  
20 that charge similar or lesser amounts, but there are very few that charge as much as or more than  
21 perfect10.com.

22 81. Even within the comparable niche of soft-core all-natural content, **perfect10.com**'s  
23 content pales in comparison to other sites. According to Dr. Zada's own description, **perfect10.com**  
24 offers subscribers 20,000 images and "several videos." Based on my examination of **perfect10.com**,  
25 the number of videos has not changed since April 2010. Dr. Zada states that new images are added to  
26 the Web site each week, but the site contains no specific information regarding the total number of  
27 images or the number/schedule of image updates. The videos in question are all short (< 2 minutes),  
28 and the photos are generally medium resolution with no interactive elements (multiple sizes, zoom,



1 etc.). The only other features of the site are as follows:

2 “Behind the Scenes” – a handful of low-resolution photos from the production of  
3 each issue of *Perfect 10* magazine;

4 “The Dating Club” – a stand-alone dating Web site that purports to offer interaction  
5 with Perfect 10 models.

6 “The Magazine and Merchandise” – a small online store offering back copies of  
7 *Perfect 10*, Perfect 10 DVD’s, and a Perfect 10 baseball cap.

8 82. Even a brief description of the leading sites in this niche plainly illustrates that  
9 **perfect10.com**’s declining subscriber base and falling revenues more likely stem from a lack of  
10 competitiveness with similar sites rather than “rampant infringement” (which all adult sites on the  
11 Internet contend with to varying degrees). All of the comparable sites offer consumers far more  
12 content, a richer variety of features, and more regularly-scheduled site updates.

13 83. Met-Art.com lists the amount of content on the site on the site’s landing page:  
14 “Updated: Aug 10<sup>th</sup> 2011 - 1,140,257 Photos, & 1,028 Movies.” Once in the site, Met-Art lists the  
15 number of updates so far in the current month, as well as the date on which each model’s gallery was  
16 added to the site. In addition to the large number of photographs, the site offers a wide variety of  
17 other features, including: 1) Live Cams, where members can chat live with various models; 2) a blog  
18 for communicating with models and other Met-Art members; 3) a recently-upgraded movie player  
19 with a variety of consumer-friendly features, including mobile access; 4) and an internal news feed  
20 that details all of the technical and substantive changes made by the site over the years.

21 84. Playboy.com does not offer a similar announcement regarding the exact number of  
22 photos and videos, but the site clearly contains an enormous quantity of content. It offers regular  
23 updates for dozens of different categories and special features, and each photo gallery clearly lists  
24 the date on which it was added, the number of photos and videos, and other special features.

25 85. Femjoy.com is another site that advertises that it specializes in “natural nudes.” The  
26 site states that it has over 200,000 photos online and that it updates its site 800 times per year with  
27 new photos and videos. Each model’s gallery lists the date on which it was added, as well as the  
28 number of photos and videos. The site also features a recently-updated video player, and all of the

1 videos are offered in a wide variety of formats and quality. Femjoy has also invested heavily in  
2 making its site accessible to smartphone users.

3 86. In terms of the amount of content and limited list of features, Domai.com is probably  
4 the most similar to **perfect10.com**. The very simply-designed site consists almost entirely of links to  
5 photo galleries of various models. The site has no videos, blogs, or other high-end features (although  
6 it is testing a new cross-over partnership with a chat site). However, even Domai.com regularly  
7 updates its site with new content (8 new galleries added in so far in August 2011) and lists the date  
8 on which each gallery was added.

9 87. Abbywinters.com is an Australian-based site that focuses, in its own words, on  
10 “beauty, naturalness and genuine sexuality.” The site features solo photo shoots of models, along  
11 with a large variety of videos. The site does not prominently list the amount of content available, but  
12 offers members access to all of its photo and video shoots going back to early 2007. The opening  
13 page for the site lists not only the most recent updates by date (along with descriptions and links to  
14 each model’s other galleries), but it also offers a long listing of upcoming photo shoots and a count-  
15 down clock for the next site update. In addition, the site offers a large number of community-  
16 building features, including a site blog, posts by staff members, discussion groups for each model,  
17 and so on. The well-designed video player offers a variety of resolution for the site’s lengthy videos  
18 (15-25 minutes on average).

19 88. Averotica.com, a European-based site in this same category, states on its splash page  
20 that the site contains 126,396 photos and 209 movies. Each gallery lists the date on which it was  
21 added, as well as the model’s name and the number of photographs. The site advertises that its video  
22 player offers high definition video in multiple formats, with weekly updates of content. Like most  
23 other sites in this category, averotica.com also offers a blog of site developments, access to live web  
24 cams, and an online store with a small collection of books.

25 89. The common characteristics of the examples cited (apart from perfect10.com and  
26 domai.com) are the vast quantity of materials available to subscribers and the range of services  
27 offered. Nearly all of these sites offer subscribers hundreds of thousands of photographs and  
28 hundreds (if not thousands) of videos, most available in high-definition and multiple video formats.

1 In addition, many of the sites charging less than perfect10.com now offer a variety of interactive and  
2 community-oriented features.

3 90. The offerings of the perfect10.com Web site – 20,000 photos and a handful of videos  
4 – are simply not competitive in the current adult marketplace as a whole or in the smaller “all-  
5 natural” niche. In order to keep its existing customers and attract new ones (the basic recipe for  
6 economic success), **perfect10.com** would need to update much more regularly (or at least let its  
7 customers known when it had done so), greatly increase the number and quality of the videos  
8 offered, consider adding interactive features, and so on. Right now, however, **perfect10.com** does  
9 little more than offer a relatively limited catalog of PG- and R-rated photos of unknown models and  
10 less than a dozen short PG-rated videos that are essentially photo montages and model interviews.

11 91. As is illustrated by the site descriptions above and by the Alexa.com ranking, there is  
12 a market for “all-natural” models, even in what is rapidly become a hypersexualized and hard-core  
13 environment. However, economic and social reality is that the market is not large, and the  
14 competition is correspondingly fierce. It is not commercially sufficient for **perfect10.com** to simply  
15 position itself as the home of “natural” models without attempting to keep pace with the levels of  
16 content and services offered by sites that specialize in the same market niche.

#### 17 **H. The Role of Copyright Infringement in Perfect 10’s Financial Situation**

18 92. In terms of the ultimate impact on Perfect 10’s business model and negative  
19 economic situation, the lack of advertising revenues, high production costs, limited content  
20 offerings, and lack of competitive innovations are all far greater factors than the inevitable copyright  
21 violations suffered by an online adult content business.

22 93. Historically, Playboy has undoubtedly suffered more copyright infringement since the  
23 start of the personal computer era than any other adult business. In the mid-1980s, in fact, the  
24 newsgroup alt.binaries.erotica, which largely consisted of scanned *Playboy* and *Penthouse* magazine  
25 photos, was described by one analyst as “gigabytes and gigabytes of copyright violations.”

26 94. Since then, Playboy has succeeded in creating one of the most popular adult sites,  
27 thanks in large part to its strong brand, its innovative online offerings, and its aggressive anti-theft  
28 measures. Other “all-natural” sites also wrestle with copyright infringements, but are more

1 economically successful because they are innovative and pro-active in adding image and video  
2 content.

3 95. In 1997, at about the same time that *Perfect 10* magazine was launched, Playboy  
4 partnered with a digital watermarking firm called Digimarc ([www.digimarc.com](http://www.digimarc.com)) to protect its  
5 images. The software has enabled Playboy to effectively track unauthorized uses of its images and  
6 substantially limit their illegal dissemination. The success of the partnership can be measured in part  
7 by the fact that there are very few news reports over the last decade involving efforts by Playboy to  
8 prevent misuse of its photos, and by the fact that a search of Google Images reveals a relatively  
9 small number of Playboy photos – far more common are shots of Playboy covers that are used for  
10 illustrative purposes. Interestingly, **playboy.com** allows subscribers to save copies of images from  
11 the site to their hard drive for their personal use (as does **perfect10.com** and each of the other sites  
12 discussed in this declaration). But if a **playboy.com** image is subsequently reposted to the Web, it  
13 will be identified by Digimarc’s “MarcSpider,” a bot that scours the net for Playboy’s content, and a  
14 report will be sent back to the company. The information by MarcSpider enable Playboy to quickly  
15 and easily send out DMCA-compliant takedown notices to offending Web sites.

16 96. By contrast, a search for “perfect 10” on Google images turns up numerous content  
17 photos presumably scanned from Perfect 10 magazine or copied from perfect10.com. Many of the  
18 images, in fact, still have the “Perfect 10” logo on them. The fact that these images are scattered  
19 across a wide variety of Web sites (unlike those of Playboy) suggests that Perfect 10 is not using  
20 similar digital watermarking technology to track its intellectual property and assist in issuing  
21 appropriate DMCA takedown notices.

22 97. Over the last thirteen years, a number of other available technologies that are  
23 specifically designed to protect a copyright holder’s rights in photographs and videos have been  
24 developed and are commercially available. For instance, Artistscope ([www.artistscope.com](http://www.artistscope.com)) is a  
25 digital rights management solution that enables a copyright holder to “assign different permissions  
26 per user or group of users. When DRM rights are assigned the document becomes ‘for their eyes  
27 only’ and any copies of that document forwarded on cannot be viewed by others unless they also  
28 have rights of view.”



1           98.     It appears that Perfect 10 has invested enormous economic resources in producing  
2 content but comparatively little in protecting it from misuse. Although that does not excuse  
3 infringement of the company's intellectual property, it raises legitimate questions about the  
4 seriousness of the company's efforts to remain competitive in a challenging market.

5           **I.       Giganews Is Not a Logical Competitor of Perfect10.com**

6           99.     In his declaration, Dr. Zada alleges that Perfect 10 "cannot even begin to compete  
7 with Defendants who sell access to billions of dollars of pirated full-length movies, songs, computer  
8 programs, and images (including thousands of Perfect 10's Images), for as little as \$5 a month."  
9 However, this is a false comparison of two very different business models.

10          100.    Giganews is not an adult website, and does not purport to be one. Its business model  
11 is built around the concept of providing access to individuals to USENET newsgroups.

12          101.    Perfect 10's economic problems are a result of its lack of competitiveness within its  
13 own market sector. Indeed, Dr. Zada's statement could be more accurately rewritten to say "Perfect  
14 10 simply cannot compete with Playboy.com's Cyber Club (or Met-Art.com, Femjoy.com, *etc.*),  
15 which sells access to thousands of high quality images, an extensive collection of videos, and  
16 interactive features, at a price lower than or comparable to what Perfect10.com charges for its much  
17 smaller collection of material." For Dr. Zada's comparison to be relevant, it is important to make  
18 sure that the businesses being compared are actually in the same market sector. Perfect 10 and  
19 Giganews are not.

20          102.    There is a very low likelihood that a consumer interested in "all-natural" models  
21 (which is Perfect 10's self-described area of specialization) would choose to subscribe to Giganews  
22 rather than Perfect 10. It is far more likely that such a consumer would search for and subscribe to  
23 one of the competitors listed above, all of which offer a much better value in terms of content and  
24 features.

25  
26  
27        //

28        //

1 I, Frederick S. Lane, declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct and that this Declaration was executed this 15<sup>th</sup> day of  
3 August 2011, in New York, New York.

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FREDERICK S. LANE

SF316560.1

Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5803

**TABLE OF EXHIBITS  
FOR EXPERT DECLARATION OF FREDERICK S. LANE**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
A	Curriculum Vitae of Frederick S. Lane	24
B	Screenshot of message and image file from deartilly.com	30
C	Screenshot of message and image file from 3rdstudios.com	32

SF:316719.1

# EXHIBIT A



# Frederick S. Lane

12 Catherine Street  
Burlington, VT 05401  
802-318-4604

FSLane3@gmail.com  
www.FrederickLane.com  
www.ComputerForensicsDigest.com

## Education

<b>Boston College Law School, Newton, MA</b>	<b>May, 1988</b>
Awarded a Juris Doctorate degree ( <i>cum laude</i> ).	
<b>Amherst College, Amherst, MA</b>	<b>May, 1985</b>
Awarded a Bachelor of Arts degree in American Studies ( <i>magna cum laude</i> ) and Classics ( <i>cum laude</i> ).	
<b>Harry S. Truman Scholar (Massachusetts)</b>	<b>May, 1983</b>
A four-year national scholarship recognizing a commitment to a career in public service.	

## Major Publications

*Cybertraps for the Young* (Chicago: NTI Upstream, June 2011).  
*American Privacy: The Four-Hundred-Year History of Our Most Contested Right* (Boston, MA: Beacon Press, January 2010).  
*The Court and the Cross: The Religious Right's Crusade to Reshape the Supreme Court* (Boston, MA: Beacon Press, June 2008).  
*The Decency Wars: The Campaign to Cleanse American Culture* (Amherst, NY: Prometheus Books, 2006).  
*The Naked Employee: How Technology Is Compromising Workplace Privacy* (New York, NY: Amacom, 2003).  
*Obscene Profits: The Entrepreneurs of Pornography in the Cyber Age* (New York, NY: Routledge, 2000).  
*Vermont Jury Instructions – Civil and Criminal* [with John Dinse and Richie Berger] (Salem, NH: Butterworth Legal Publishers, 1993).

## Employment History

<b>Computer Forensics Expert, Burlington, VT</b>	<b>1999-present</b>
Performed computer forensic examinations and provided technical consultative services to clients in a wide range of civil and criminal cases, ranging from intellectual property theft and zoning ordinance challenges to murder, obscenity, and child pornography. Trained in the use of the X-Ways Forensics software suite, as well as the operation and structure of computers, hard drives, and file systems. Extensive experience in the operation and file storage capabilities of personal computers, as well as the economics and business operations of the online adult industry. Testimonial experience in depositions, trial, and sentencings.	

I am currently listed as a computer forensics expert with **The TASA Group** (www.tasanet.com), the **Silicon Valley Expert Witness Group**, the **Vermont Criminal Defense Lawyers Association**, and the **Vermont and New York State Public Defenders Associations**.

**Author/Lecturer, Burlington, VT**

**February 1995 - present**

Author of seven books and numerous articles focusing on law, technology, privacy, obscenity, employee rights, and contemporary political issues. Organizer and presenter of dozens of seminars and lectures based on the topics covered in those books. Extensive media experience, including numerous on-camera interviews on all major networks and live interviews on dozens of national and local radio shows.

**Associate, Miller, Eggleston & Cramer, Burlington, VT August 1993 - February 1995**

As associate attorney, assisted partners in handling all aspects of trial preparation and litigation. Primary practice area was business litigation, with additional work in the areas of corporate law and intellectual property.

**Associate, Dinse, Knapp & McAndrew, Burlington, VT October 1990 - August 1993**

As associate attorney, assisted partners and senior associates in all aspects of litigation. Primary practice areas included insurance defense, medical malpractice, and intellectual property. In 1993, co-authored "Vermont Jury Instructions -- Civil and Criminal" with partners John Dinse and Richie Berger.

**Law Clerk, Hon. Frank H. Freedman, Chief Judge, October 1988 - October 1990  
United States District Court for the District of Massachusetts,  
Springfield, MA**

Assisted Chief U.S. District Court Judge Frank Freedman in the research and drafting of federal trial court opinions. Also assisted in all aspects of federal trials, including jury selection, motion and evidentiary hearings, preparation of jury instructions, and post-trial motions.

### **Recent Lectures and Seminars**

**"Computer Forensics 101,"** West Virginia Public Defenders Conference, Glade Springs, WV, June 16, 2011. Introductory lecture on computer forensics for state public defenders program.

**"There's No Such Thing as 'Safe Sext' -- How to Protect from Cell Phone Misuse,"** National School Boards Association Annual Conference, San Francisco, CA, April 9, 2011. A lecture for school board members and superintendents about the rise of sexting among teenagers and strategies for preventing it.

**"Integrating Cyber-Bullying Prevention Within a Comprehensive All-Hazards School Crisis Plan,"** National School Boards Association Annual Conference, San Francisco, CA, April 8, 2011. Guest appearance at a full-day pre-conference workshop organized by Winton I. Goodrich, Associate Director, Vermont School Boards Association.

**"Bill of Rights 101,"** Castleton State College, Castleton, VT, April 4, 2011. Keynote address on civil liberties and technology at the annual Bill of Rights day hosted by the American Civil Liberties Union of Vermont.

**"CyberTraps for Law Students (and Young Lawyers),"** Vermont Law School, South Royalton, VT, March 21, 2011. Lecture on potential legal and ethical traps for new lawyers.

**"Sexting: How One Click Can Ruin Your Child's Life (The Social and Legal Risks of Cellphone Misuse),"** Boston College, Newton, MA, March 3, 2011. Lecture for general college audience on the rise of sexting among students and steps parents and schools can take to limit the incidence of risky online behavior.

**"Media Law and Ethics,"** St. Michael's College, Colchester, VT, February 24, 2011. Visiting class lecture on the history of privacy and the impact of technology.

**"The History of Privacy in America,"** The Warren White Lecture, Drury University, Springfield, MO, February 17, 2011. A lecture based on "American Privacy," delivered as part of Drury University's convocation on the theme "The Persistence of Memory: Perspectives on the Past."

- "Jurisprudishness: Law and Visual Culture in the United States, 1842-1973,"** College Art Association Annual Meeting, New York, NY, February 11, 2011. Co-chaired a panel discussion with Dr. Amy Werbel, St. Michael's, on the impact of court decisions, legislation, and governmental censorship efforts on visual culture.
- "Computer Forensics and the Fourth Amendment,"** Introduction to Computer Forensics, Champlain College, Burlington, VT, January 24, 2011. Class visit to discuss relationship of Fourth Amendment to various computer forensics issues.
- "LimeWire Made Me Do It -- and Other Digital Excuses,"** Alabama Federal Defenders Program [M.D.], Montgomery, AL, December 8, 2010. Seminar on the technical and legal issues related to peer-to-peer file sharing in criminal cases.
- "LimeWire Made Me Do It -- and Other Digital Excuses,"** Vermont Public Defenders, Montpelier, VT, December 3, 2010. Seminar on the technical and legal issues related to peer-to-peer file sharing in criminal cases.
- "LimeWire Made Me Do It -- and Other Digital Excuses,"** California Federal Defenders Program [M.D.], Los Angeles, CA, December 1, 2010. Seminar on the technical and legal issues related to peer-to-peer file sharing in criminal cases.
- "LimeWire Made Me Do It -- and Other Digital Excuses" and "Computer Forensics 101,"** Nevada Federal Defenders Program, Reno and Las Vegas, NV, November 16 & 17, 2010. Seminars on the technical and legal issues related to peer-to-peer file sharing in criminal case and the basics of computer forensics.
- "Can You See Me Now? The Growing Problem of Sexting in the Public Schools,"** Vermont School Boards Association Annual Conference, Fairley, VT, October 29, 2010. Lecture to Vermont school board members and district administrators on the growing problem of sexting in public schools and the steps that can be taken to address the problem.
- "Computer Forensics 101,"** Chittenden County Public Defenders, Burlington, VT, September 24, 2010. Lunchtime lecture on basic issues of computer forensics in criminal cases.
- "The Serpentine Wall,"** Arizona Schools Boards Association Annual Law Conference, Phoenix, AZ, September 10, 2010. Seminar for school board members and administrators on issues relating to religion in the public schools.
- "The World Wide Bathroom Wall,"** Arizona Schools Boards Association Annual Law Conference, Phoenix, AZ, September 9, 2010. Seminar for school board members and administrators on the growing problem of sexting in the public schools.
- "LimeWire Made Me Do It -- And Other Digital Excuses,"** Federal Public Defenders, Middle & Eastern Districts of Tennessee, Knoxville, TN, July 30, 2010. Seminar on the technical and legal issues related to peer-to-peer file sharing in criminal cases.
- "Can You See Me Now? The Growing Problem of Sexting in the Public Schools,"** Catawba County Schools, Newton, NC, July 28, 2010. Day-long professional development for administrators, teachers, and parents on the dangers of sexting and measures that can be taken to prevent it.
- "American Privacy: Can a 19th-Century Right Survive 21st-Century Technology?,"** Securing the eCampus 2010, Dartmouth College Institute for Security, Technology, and Society, Hanover, NH, July 20, 2010. Lecture, workshop, and book-signing on the impact of Internet and surveillance technology on the right to privacy.
- "Limewire Made Me Do It -- and Other Digital Follies,"** Office of the Federal Public Defender, Washington, D.C., May 5, 2010. Presentation to federal public defenders on peer-to-peer software technology, Internet caches, and other computer-related topics in obscenity and child pornography cases.

**Censorship**, University of Vermont, April 20, 2010. Visiting lecture on the right to privacy in American society.

**“Can You See Me Now? The Growing Problem of Sexting in the Public Schools,”** National School Board Association Annual Conference, McCormick Place-West Convention Center, Chicago, IL, April 11, 2010. Lecture on the rapidly-growing phenomenon of sexting among middle and high school students around the country.

**“Social Media: The Undiscovered Country,”** Vermont Bar Association Mid-Year Meeting, Burlington, VT, March 19, 2010. Panel discussion on various aspects of social media for attorneys, including First Amendment and computer forensic issues.

**“Living in a Wired World: Can Privacy Survive in the 21<sup>st</sup> Century?”**, Sun Valley Center for the Arts, Sun Valley, ID, March 10, 2010. Lecture and book-signing for *American Privacy: The Four-Hundred-Year History of Our Most Contested Right*.

**“Living in a Wired World: Can Privacy Survive in the 21<sup>st</sup> Century?”**, University of Vermont, Burlington, VT, November 18, 2009. Lecture on the impact of technology on student privacy and book-signing for *American Privacy: The Four-Hundred-Year History of Our Most Contested Right*.

### **Community and Public Service**

**Burlington School Board, Burlington, VT** **October, 2001 - March 2011**

Elected as one of two Ward 5 representatives to the Board of School Commissioners. Duties include drafting District policies, overseeing operation of District administration, helping to develop and present District budget for annual Town Meeting day vote, and in general, representing the best interests of the city’s children. Member of the Technology Subcommittee, October 2001 - March 2005; Chair of the Finance Subcommittee, April 2005 - March 2009; Clerk of the Board, April 2003 - March 2009; Board Chair, April 2009 - March 2011.

**Vermont Community Access Media, Burlington, VT** **May, 2007 - May 2010**

Elected by local cable subscribers and media producers to serve as member of VCAM Board of Directors. Duties include drafting organization policies, overseeing and evaluating the VCAM Executive Director, reviewing VCAM expenditures, and advising VCAM staff on interaction with the public and area cable companies. Secretary of the Board, May 2007 - May 2010.

**Ward Clerk, Ward 5, Burlington, VT,** **April, 1996 - October, 2001**

Responsible for overseeing operation of neighborhood polling place during national, state, and local elections.

**Burlington Fire Commission, Burlington, VT,** **July, 1992 - June, 1998**

Served as commissioner on community oversight board for the Burlington Fire Department. Vice-Chair, July 1995 - June 1998.



# EXHIBIT B

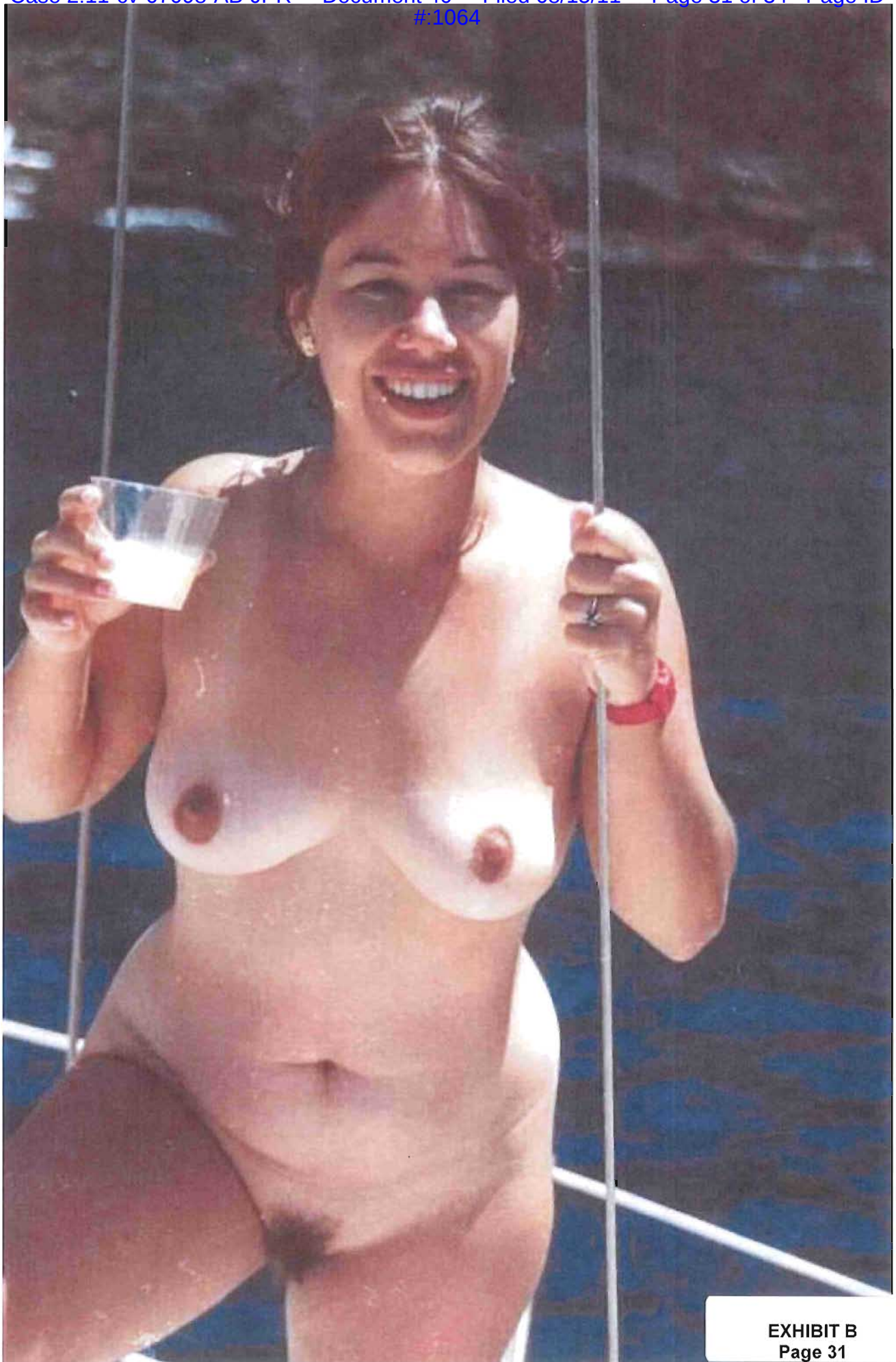
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From: -Matilda <[deartilly@TAKEOUT.usi.com](mailto:deartilly@TAKEOUT.usi.com)>  
Date: Sun, 22 May 2010 18:59:19 -0400  
Newsgroups: alt.sex.alt.sex.amateur,alt.sex.binaries,alt.sex.binaries.erotica  
Subject: Nude beach see index - ndb3060.jpg [1/1]  
Message-Id: <9d80.10b07.3b9.B073@melb.tel1.au>  
Organization:  
X-No-Archive: Yes  
content-length: 60795  
Lines: 974  
NNTP-Posting-Host: ec09bc3f.unlimited.usenetmonster.com  
X-Trace: DXC=3cLmKZfMbVSSVi'SUJHi>YkV2KDSF=2@RFV0LA4MijQ[mTIDj6@1Wa\_eWiNYVNO\*Y\*oaXhEebLPXK9NCICKlaQY=FGKj>D3bl][2f;S9k<QQ  
X-Complaints-To: [killthespammer@usenetmonster.com](mailto:killthespammer@usenetmonster.com)  
Bytes: 61547  
Xref: number.nntp.dca.giganews.com alt.sex.binaries.erotica:305028 alt.sex.binaries:533995 alt.sex.amateur:798905 alt.sex:1136313  
  
bunD5E{<.Jl[-9UGMHZ[oOP5#U/ SBx0CT4RzKve7PI>66WG"2&#%PJDD+/l%<917z{fJk

---

{~::~} The Naked Picture Poster from Down Under  
{Y}  
{::~} My personal homepage - [www.tillymustbehers.com](http://www.tillymustbehers.com)  
{::}  
{::} My tits - [www.deartilly.com/myboobs](http://www.deartilly.com/myboobs)

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<< Attached file: ndb3060.jpg (43 122 bytes) >>



# EXHIBIT C



Path: XbuXI tags.giganews.com!border1.nntp.dca.giganews.com!nntp.giganews.com!local2.nntp.dca.giganews.com!news.giganews.com.POSTED!not-for-mail  
NNTP-Posting-Date: Mon, 08 Aug 2011 10:00:23 -0500  
From: [bnndfs@3rdstudios.com](mailto:bnndfs@3rdstudios.com) (-3RD STUDIOS-)  
Sender: [bnndfs@3rdstudios.com](mailto:bnndfs@3rdstudios.com)  
Newsgroups: alt.binaries.sex.alt.sex.female.alt.sex.pictures  
Subject: Sophie Dee Works Cock Like A True Pro 429/429] - sophie-dee-3rd-3-29-1061.jpg (1/1)  
X-NewsPoster: NNTP POWER.POST 2000 (Build 25) - net-toys.8k.com  
Message-ID: <jcydne9FHuaaZ6LTnZ2dnUVZ\_oKdnZ2d@giganews.com>  
Date: Mon, 08 Aug 2011 10:00:23 -0500  
Lines: 2938  
X-Usenet-Provider: <http://www.giganews.com>  
X-Trace: sv3-EVN+J8uRwYS048FzttX+nHi0lxYPdrqXwVW4VAJdl1f3DdcNFxBiLbwqhUeZgoubXO2RST8llaWslsDJyteiFjxuoi+hffNzdVz2iWR9F76/aGGc0wUuVvke6EgxDp/ltco6iIOiC81umCq!H0YBruOz0U=  
X-Complaints-To: [abuse@giganews.com](mailto:abuse@giganews.com)  
X-DMCA-Notifications: <http://www.giganews.com/info/dmca.html>  
X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers  
X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your complaint properly  
X-Postfilter: 1.3.40  
Bytes: 185974  
X-Original-Bytes: 185911  
Xref: number.nntp.dca.giganews.com alt.sex.pictures:3365381 alt.sex.female:1035719 alt.binaries.sex:2796364

<< Attached file: sophie-dee-3rd-3-29-1061.jpg (132,020 bytes) >>



EXHIBIT C  
Page 34

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